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10/690,535	10/23/2003	David A. Rickrode	23610.00	9103

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EXAMINER

NGUYEN, TRINH T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,535

Applicant(s)

RICKRODE, DAVID A.

Examiner

Trinh T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-15 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/23/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: in line 2 of claims 13 and 14, there is no disclosure in the specification for the term "a mounting clamp".

Claim Objections

2. Claims 11 and 14 are objected to because of the following informalities:

in line 3 of claim 11, the phrase "the wing holder" should be amended to --the wing support arm-- in order to be consistent with the specification;

in line 6 of claim 14, the phrase "a mounting pole" should be amended to --a supporting post-- in order to be consistent with the specification. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kricke (US 892,528).

For claim 1, Kricke discloses a holder to use recently killed fowl as decoys, comprising: an oval basket (7, 5, 1, 6, 10, 12, 9, 11b, 11, 14) having a front end, a rear

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end, and two sides; a head and neck support arm (20, 22, 21, 23, 24, 25) having front and rear ends wherein the rear end being fastened to the front end of the basket and the front end extending forward from the front end of the basket; a wing support arm (11c) extending sideward from each of the two sides of the basket.

For claim 7, Kricke further discloses that the head and neck support arm is made from a length of heavy gauge wire (Note that *The American Heritage Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company (Electronic version licensed from INSO Corporation) defines the term "rod" as "a thin straight piece or bar of material, such as metal or wood, often having a particular function or use" and the term "wire" as "a usually pliable metallic strand or rod made in many lengths and diameters, sometimes clad and often electrically insulated, used chiefly for structural support or to conduct electricity". Also, note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Kricke's rod structure for the head and neck support arm can be considered as a heavy guage wire).

For claim 8, Kricke further discloses a neck holder (24) disposed near the front end of the head and neck support arm.

For claim 9, Kricke further discloses a neck holder (24) is a length of heavy gauge wire (Note that *The American Heritage Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company (Electronic version licensed from INSO Corporation) defines the term "rod" as "a thin straight piece or bar of material, such as metal or wood, often having a particular function or use" and the term

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"wire" as "a usually pliable metallic strand or rod made in many lengths and diameters, sometimes clad and often electrically insulated, used chiefly for structural support or to conduct electricity". Also, note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Kricke's rod structure for the neck holder can be considered as a heavy guage wire) formed generally into a "V" shape having an apex (the area near reference no. 23) and two arms wherein the apex being fastened to the head and neck support arm and the two arms extending upward (see Figure 4).

For claim 10, Kricke further discloses that the wing support arms comprises a length of heavy gauge wire (Note that *The American Heritage Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company (Electronic version licensed from INSO Corporation) defines the term "rod" as "a thin straight piece or bar of material, such as metal or wood, often having a particular function or use" and the term "wire" as "a usually pliable metallic strand or rod made in many lengths and diameters, sometimes clad and often electrically insulated, used chiefly for structural support or to conduct electricity". Also, note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Kricke's rod structure for the wing support arms can be considered as a heavy guage wire).

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5. Claims 1-8, 10, 11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 2,812,608).

For claims 1 and 2, Jones discloses a holder comprising: an oval basket having a front end, a rear end, and two sides, wherein the basket comprises an oval rim (30, 36, 38, pass 86, pass 22, 30, pass 22, 34) (the rim defining a plane) having a front end and a rear end and two sides, a longitudinal support (50) extending from the front end of the rim to the rear end of the rim in which the longitudinal support being fastened to the rim at each end and a lateral support (80, 84) extending between the two sides of the rim; a head and neck support arm (102, 100, 106, 108, 110, 112, 114, 118) having front and rear ends wherein the rear end being fastened to the front end of the basket and the front end extending forward from the front end of the basket; and a wing support arm (80, 20) extending sideward from each of the two sides of the basket.

For claim 3, Jones further discloses that the rim is made of a length of heavy gauge wire formed into an oval (Note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Jones' rim can be considered as a heavy guage wire).

For claim 4, Jones further discloses that the longitudinal support is a length of heavy gauge wire (Note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Jones' longitudinal support can be considered as a heavy guage wire) having first and second ends, the first end being fastened to the front end of the rim (at 48, 40) and the second end being fastened to the rear end of the rim (at 52).

For claim 5, Jones further discloses that the lateral support is a length of heavy gauge wire (Note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Jones' longitudinal support can be considered as a heavy guage wire) having first and second ends, the first end being fastened to one side of the rim (at 86) and the second end being fastened to the other side of the rim (on the opposite side between reference numbers 34 and 100).

For claim 6, Jones further discloses that the longitudinal support and the lateral support are arcuately shaped (see Figure 1).

For claim 7, Jones further discloses that the head and neck support arm is made of a length of heavy gauge wire (Note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Jones' head and neck support arm can be considered as a heavy guage wire).

For claim 8, Jones further discloses a neck holder (118) disposed near the front end of the head and neck support arm (see Figure 1).

For claim 10, Jones further discloses that the wing support arms comprises a length of heavy gauge wire (Note that Applicant did not provide a specific dimension and/or degree for the term "heavy gauge". Therefore, it is believe that Jones' wing support arms can be considered as a heavy guage wire).

For claim 11, Jones further discloses a wing holder (see Figure 1) disposed on each wing support arm (80, 20) near the end of the wing holder away from the basket.

For claim 15, Jones further discloses that the wing support arms are angled slightly downward from the plane of the rim (see Figure 1).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kricke (US 892,528) in view of Ditto (U.S. 843,588).

As described above, Kricke further discloses a hanging rod member (2) with a bullet (4) acting as a weight for the purpose of balancing the holder in water as well as keeping the holder in place. However, Kricke does not teach a mounting clamp comprises a mounting tube fastened to and extending downward from the basket wherein the mounting tube having a threaded aperture defined therein and the mounting tube being placed over an end of a mounting pole and a clamp screw removably engaged with the threaded aperture.

Ditto teaches a holder for a decoy wherein a holder having a basket (2) and a mounting clamp (6, 8, 7) disposed on the basket wherein the mounting clamp comprises a mounting tube (6) fastened to and extending downward from the basket wherein the mounting tube having a threaded aperture defined therein and the mounting tube being placed over an end of a mounting pole (7) and a clamp screw (8) removably engaged with the threaded aperture (see Figure 1). Note that Ditto's mounting clamp is for holding the holder in place by inserting rod member (7) into the bottom of the pond (see lines 55-60). Therefore, it would have been obvious to one having ordinary skill in the

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art at the time the invention was made to have modified the holder of Kricke so as to include the use of a mounting clamp, in a similar manner as taught in Ditto, since to do so would keep the holder in place.

Allowable Subject Matter

8. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The following prior art made or record and not relied upon is considered pertinent to applicant's disclosure: US 230,600 teaches a frame/holder for supporting dead birds as decoys.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T Nguyen whose telephone number is (703) 306-9082. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on (703) 306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Trinh Nguyen
Patent Examiner, AU 3644
03/08/04